

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3978 of 2016

Along with

Interlocutory Application No. 2300 of 2016

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Shashi Bhushan Mallick, Son of Shree Sitadin Mallick, resident of village - Amta,
P.O.- Dohat Narayan, P.S.- Baheri, District- Darbhanga.

.... Petitioner/s

Versus

1. Darbhanga Municipal Corporation, Darbhanga, through its Municipal Commissioner.
2. Executive Engineer, Darbhanga Municipal Corporation, Darbhanga.
3. Accountant Darbhanga Municipal Corporation, Darbhanga.
4. Cashier, Darbhanga Municipal Corporation, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Shahnawaz Ali, Advocate

For the D.M.C. : Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 07-12-2016

Heard learned counsel for the parties.

The petitioner has moved the Court seeking refund of the money deposited by him for having taken settlement of a tempo stand of the Darbhanga Municipal Corporation (hereinafter referred to as the 'Corporation') for the period 2015-2016 and also for award of cost and compensation.

The petitioner, pursuant to notice dated



17.03.2015 had taken part in the bid for settlement of tempo stand no. 2 in the town of Darbhanga under the Corporation and his bid on 17.04.2015 for Rs. 2,00,000/- being the highest, the settlement was approved in his favour. He paid Rs. 1,50,000/- and provisional parwana was also issued to him on 06.05.2015. The petitioner did not pay the remaining amount of Rs. 50,000/- and moved the authorities for demarcation of the boundary of the stand and in the alternative to return the bid amount which he had deposited. When the Corporation did not respond, the petitioner has moved this Court in the present writ application.

Learned counsel for the petitioner submitted that the tempo stand in question has not been demarcated and thus he could not enjoy the fruits of his bid by realising parking fee. He further submitted that the Corporation has taken the stand that Rs. 50,000/- is due from him, but in fact he has paid Rs. 1,60,000/-, which shows that they have not correctly made entries of the amount paid by the petitioner. Learned counsel submitted that the petitioner had written to the Commissioner of the Corporation on 09.09.2015, bringing to his notice the problem faced by him and requesting him to get the demarcation done or return Rs. 1,60,000/- deposited by him.

Learned counsel for the Corporation has filed a counter affidavit in which it has been stated that the petitioner has



enjoyed the settlement for the period of such settlement which was till 31.03.2016, and thus, it is wrong to say that it has caused loss to him. Learned counsel further submitted that the petitioner himself, on 24.04.2015, had filed a petition seeking extension of time for depositing the money, admitting that he had not deposited the amount in time. Learned counsel submitted that the terms of the notice itself stipulates that within 24 hours from the settlement, 50 per cent of the amount has to be deposited and the rest was to be deposited by 30.09.2015. Learned counsel submitted that neither the 50 per cent was deposited within 24 hours nor the remaining amount of 50 per cent has been paid till date. It was submitted that the petitioner has moved the Court at the fag end of the settlement with ulterior motive. Learned counsel referred to the notice dated 17.03.2015 and submitted that the tempo stand in question was settled without there being any stipulation of there being any fresh demarcation, and thus, it is obvious that it was on an “as is where is” basis. It was further submitted that in the letter written by the petitioner to the Municipal Commissioner on 24.04.2015 asking for further time to deposit the money, no such plea has been raised and, thus, it is obvious that it was an after thought. Learned counsel submitted that the amount deposited by the petitioner in terms of the bid was Rs. 1,50,000/- as the remaining Rs. 10,000/- was with regard to the charges for the



agreement to be executed.

Having considered the rival contentions, the Court does not find any merit in the writ application. The petitioner has taken the settlement in an open auction after being fully aware of what was the position on the ground. After getting the settlement in his favour, he cannot dictate terms and start demanding facilities from the Corporation. Further, by issuing temporary parwana, the petitioner had acquired full right to run the stand and the Court has no reason to accept or presume that he was not doing the same. The petitioner is also a defaulter as far as time schedule for payment is concerned. The Corporation was under no obligation to demarcate the stand and it was the discretion of the petitioner either to accept the position or not to participate in the bid. Once having participated and not having raised these objections at the very first point of time, where in fact he asked for further time for depositing the money and subsequently also deposited part of the money, clearly indicates that the issues being raised by the petitioner is by way of after thought/lame excuses and does not appear to be *bona fide*.

For the reasons aforesaid, the writ application stands dismissed.

Re.: Interlocutory Application No. 2300 of 2016

The Interlocutory Application filed by the



petitioner seeking stay of the notice contained in Letter No. 801 dated 05.03.2016 relating to fresh settlement for the year 2016-2017, having become infructuous, stands disposed off.

(Ahsanuddin Amanullah, J.)

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